Supreme Court, U.S.
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No.

In The
Supreme Court of the United States

JERRY NORFLEET
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition For A Writ Of Certiorari
To The United States Court of
Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI
with Appendix

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February, 2006

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QUESTIONS PRESENTED FOR REVIEW

I.. Whether the mandatory minimum sentence imposed by the district court based upon its findings of drug quantity violated *Apprendi* and *Booker*, even though the sentence imposed falls within the statutory maximum?

II. Whether the correct remedy for a *McLaughlin* violation that occurs during the violation should be the exclusion of the evidence?

III. Whether the Sixth Circuit erred in finding that the stop and detention of your Defendant was "reasonable" under *Terry v. Ohio*, 392 U.S. 1 (1968)?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF CASES AND AUTHORITIES iv

PETITION FOR WRIT OF CERTIORARI 1

OPINION BELOW 2

JURISDICTION 2

STATEMENT OF THE CASE 2

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT OF CERTIORARI 5

Relevant Facts 5

Argument 8

CONCLUSION 28

APPENDIX:

Order Denying Rehearing
filed 09/13/05 ..... A1-A1

Petition for Rehearing,
filed 08/25/05 ..... B1-B13

Opinion,
filed 08/10/05 ..... C1-C22

Judgment [Western District of Tennessee],
filed 06/16/04 ..... D1-D8

TABLE OF AUTHORITIES

Cases

Apprendi v. New Jersey,
530 U.S. 466 (2000) 8, 11-19, 22

Harris v. United States,
536 U.S. 545 (2002) 14-19

Pennsylvania v. Mimms,
434 U.S. 106 25

Shepard v. United States,
125 S.Ct. 1254 20

Terry v. Ohio,
392 U.S. 1, (1968) 24-27

United States v. Booker,
125 S.Ct. 738 (2005) 2, 4, 8, 10, 20

United States v. Copeland,
321 F.3d 582 (6th Cir. 2003) 11-12, 14-16, 20

United States v. Flowal,
234 F.3d 932 (6th Cir. 2000) 11, 13

United States v. Gonzales,
420 F.3d 111 (2nd Cir. 2005) 16, 22

United States v. Goodine,
326 F.3d 26 (1st Cir. 2003) 20

United States v. Graham,
317 F.3d 262 (D.C. Cir. 2003) 20

United States v. Humphrey,
287 F.3d 422 (6th Cir. 2002) 13

United States v. Leachman,
309 F.3d 377 (6th Cir. 2002) 11

United States v. Martinez,
277 F.3d 517 (4th Cir. 2002) 20

United States v. Norfleet,
143 Fed.Appx. 645
(6th Cir.2005)(unpublished) 10

United State v. Place,
462 U.S. 696 (1983) 25

United States v. Solis,
299 F.3d 420 (5th Cir.) cert. denied,
537 U.S. 1060 (2002) 20

United States v. Velasco-Heredia,
319 F.3d 1085 20

IN THE

SUPREME COURT of the UNITED STATES

JERRY NORFLEET,

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vs.

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On Petition For Writ Of Certiorari
To The United States Court of Appeals
For the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner, Jerry Norfleet, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit filed on August 10, 2005. Petitioner filed a Petition for Rehearing which was considered and denied by order of the Sixth Circuit filed on September 13, 2005.

OPINION BELOW

The Court of Appeals for the Sixth Circuit entered its order affirming the petitioner's conviction, vacating petitioner's sentence, and remanding for re-sentencing in light of this Honorable Court's opinion in *Booker* on August 10, 2005. A copy of the opinion is annexed in the appendix. Petitioner filed a Petition for rehearing on August 25, 2005, that upon consideration was denied by order of the Sixth Circuit filed on September 13, 2005. A copy of the Petition for Rehearing (Apx. B) and Order denying (Apx. A) same is annexed in the appendix.

JURISDICTION

On August 10, 2005, the Court of Appeals for the Sixth Circuit entered its ruling affirming the district court (Apx. C). Jurisdiction to review the judgment of the Court of Appeals is conferred upon this Court by Title 28 U.S.C. § 1254.

STATEMENT OF THE CASE

Nature of the Case

Jerry Norfleet appealed his sentence in the United States District Court for the Western District of Tennessee before the Honorable Judge Jon Phipps McCalla. The Judgment Including Sentence under the Sentencing Reform

Act was filed on June 16, 2004, and a timely Notice of Appeal was filed on June 23, 2004.

Proceeding and Disposition in the Trial Court

On October 30, 2001, a Federal Grand Jury indicted Defendant, Jerry Norfleet, and a co-Defendant for a violation of Title 21 U.S.C. §846. The indictment alleged that the Defendant did unlawfully, knowingly, and intentionally, combine, conspire, confederate, and agree with others, both known and unknown to the grand jury, to possess with intent to distribute in excess of 5 kilograms of cocaine, a controlled substance as classified by Title 21 U.S.C. § 812 as a schedule II controlled substance.

On April 22, 2002, Defendant filed a Motion to Suppress all Physical Evidence, Motion to Suppress Statements, and Motion to Suppress Jail Recordings. A hearing on Defendant's Motions to suppress was conducted before the District Court on June 19, 2003 and continued on June 25, 2003. On August 29, 2003, Defendant filed a Memorandum in Support of Motion to Suppress. The District Court entered an Order Denying Defendant's motions to suppress on November 7, 2003.

A jury trial commenced on March 8, 2004 and concluded on March 16, 2004. The jury returned a verdict finding Defendant guilty of count one of the indictment. A

sentencing hearing was conducted on June 16, 2004 and the District Court sentenced Defendant to fifteen years and six months of incarceration followed by five years of supervised release.

Proceeding and Disposition in the Sixth Circuit Court of Appeals

The petitioner filed a notice of appeal on June 23, 2004. Oral Argument was held on April 21, 2005. The Sixth Circuit entered its opinion on August 10, 2005, affirming the petitioner's conviction, vacating petitioner's sentence, and remanding for re-sentencing in light of this Honorable Court's opinion in *Booker*.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT OF CERTIORARI

Relevant Facts

On the evening of December 7, 2000, Sergeant Mark Calvi, a drug detector dog handler, received information that an employee of a U-Stor storage facility in Memphis, Tennessee, discovered a large sum of cash hidden inside unit T-12 at the U-Stor facility. Since the storage unit's lessee had become delinquent in his payments, a U-Stor employee sought to determine if the lessee had vacated the unit. To do so, the employee cut off the lessee's lock, opened the unit's gate, discovered that the unit had not been vacated, searched the contents of the unit, notified law enforcement of locating a large sum of cash, and then placed a U-Stor lock on the unit. On the morning of December 8, 2000, Sgt. Calvi detailed his drug detection dog on various units in the U-Stor facility and received a positive alert on two units, unit T-12 and unit K-3. After receiving these alerts, he contacted Officer Bierbrodt and requested that he obtain search warrants for these units. He also contacted additional officers to assist him in executing the warrants. These officers positioned themselves in a parking lot of a grocery store adjacent to the U-Stor facility. During this time, the manager of the U-Stor told Sgt. Calvi that some men had come to the U-Stor office on the evening of December 7, 2000, and paid cash to restore the lease on unit T-12. The manager described the vehicle they

were driving as a "gold SUV type vehicle." The men also purchased a new lock from the facility. The men were permitted to place the new lock on the unit, but were not permitted to gain access to the unit's contents. The local manager untruthfully stated that only the regional manager had the key to the lock placed on the unit by the U-Stor employee, and the he, the local manager, could not get the key until the following day.

While officers waited for the search warrant, a bronze or gold Ford Explorer drove up to the U-Stor lot and stopped at the entrance gate. The manager told Sgt. Calvi that he believed that this vehicle was the same one that he had seen the previous day when the men had renewed unit T-12's lease. To gain access to the storage facility, one has to input a code at the entrance gate. Each storage unit is assigned a unique code. The driver entered a valid code. After gaining entrance, the Explorer drove toward building T. Sgt. Calvi then ordered the "take-down" of the Explorer. The officer followed the vehicle and stopped the occupants while it was nearing unit T. After positioning vehicle in front and behind the Explorer to prevent any potential escape, the officers approached the Explorer with their guns drawn, ordered the occupants, who consisted of the driver, Darrelle Jones, and the passenger, the petitioner, Jerry Norfleet, from the vehicle, placed them on the ground, patted them down, handcuffed them, placed them in one officer's vehicle and transported them to the parking lot across the street. Another officer